

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001**

**Experimental Periodicals
Co-Palletization Dropship
Discounts For High Editorial
Publications**

) **Docket No. MC2004-1**

**RESPONSE OF AMERICAN BUSINESS MEDIA
TO POSTAL SERVICE REQUEST FOR RECONSIDERATION OF
DISCOVERY SCHEDULE
(April 12, 2004)**

On April 5, 2004, the Postal Service submitted a request for reconsideration of the May 24th date previously established as the deadline for submitting discovery to the Postal Service. It has not, however, suggested any alternative. For the reasons set forth below, American Business Media hereby opposes that request.

The Postal Service's request is strange, inasmuch as the Postal Service does not seek an earlier date for the hearings on its direct case or for intervenor testimony, so granting its request and terminating discovery sooner will not expedite this case. Thus, at the prehearing conference, the Chairman asked for a statement of witness Taufique's availability for cross-examination during the period from June 14 to June 25. On March 29, after consultation with the active parties, counsel for the Postal Service indicated a collective preference for that hearing to be held on either June 14 or 16, the start of that two-week period. American Business Media fails to see any benefit in shortening the discovery period, assuming that the hearing will be held on one of those dates.

This opposition is not based solely upon the ineffectual nature of the unspecified relief sought, although the limited relief sought by the Postal Service position certainly undercuts the first of the two reasons for shortening the discovery period that are set forth in its Request (at pages 5-6): that it seeks “to expedite consideration of its proposal in this docket. . . .” The other rationale (*id.*) is that it wishes “to increase its ability to plan for significant expedition in future experimental filings” (footnote omitted). The Commission should assure the Postal Service that the procedural schedule in future cases will be tailored to the needs of each case and will not be based upon the procedural schedule in this one.

Apart from these shortcomings, the Postal Service’s plea for expedition appears to be somewhat contrived. American Business Media interrogatory ABM/USPS-T1-1 asked when the Postal Service first considered filing a co-pallet discount that would benefit high editorial content publications. Mr. Taufique’s response states that the “genesis of this idea” was contained in his testimony in Docket No. R2001-1 (which we note was filed on September 24, 2001). It has thus taken the Postal Service nearly two and a half years to convert this idea into a bare-bones proposal, a leisurely pace that undermines the Request.

Finally, American Business Media notes that the Postal Service’s initial responses to interrogatories and requests for documents do not demonstrate a zeal to complete discovery promptly. American Business Media’s review of the Postal Service’s first set of responses is not complete, but it is clear that the Postal Service is doing what it can to invite multiple rounds. For example,

American Business Media propounded the following interrogatory and request for production:

ABM/USPS-T1-4. Please describe in detail, provide all documents related to, and provide the results of any study, investigation or other effort made by or on behalf of the Postal Service to determine the number of Periodicals (by title and annual pieces) that would be likely to avail themselves of the proposed rates.

The response reads:

I expect that most publications likely to avail themselves of the proposed rates are printed by CADMUS Communications. I am attaching a database provided by CADMUS of publications it prints that are exclusively in sacks. All of them meet the criterion of 15 percent or less advertising. Not all of them meet the 9 ounce or more copy weight requirement, but the information is presented for various weight cutoffs of 8, 10, and 12 ounces.

Other than the actual numbers from this particular printer, our informal discussions with a variety of printers led us to estimate the 20 million pieces that we think will make use of the proposed discounts.

The Postal Service has claimed no privilege or confidentiality with respect to this request, yet it produces *no* documents—no letters, no notes, no calculations, no e-mails—to show the derivation of the 20 million piece estimate, other than a spreadsheet from CADMUS (submitted as an erratum on April 6) showing, it appears, the number of potentially qualified pieces at the ounce increments specified in the response quoted above. The Postal Service gives no clue how it moved from these data to an estimate of 20 million pieces, other to refer to “informal discussions.” This response begs for follow-up, and American Business Media intends to answer that call. But if the Postal Service wished to demonstrate a commitment to expedition, it could have provided complete responses to this and other requests.

Finally, American Business Media would point out to the Commission that, unlike the Postal Service, it does not have available to it phalanxes of skilled postal rate lawyers and consultants to litigate multiple cases simultaneously. The Commission has just set for hearing the complaint in Docket No. MC2004-1, albeit over the Postal Service's objection (and to American Business Media's thus far unexpressed dismay). Discovery in that case is set to commence following the filing of the remaining complainants' testimony on April 26th, two weeks from now. Shortening the time for discovery in this case (especially while leaving the remaining procedural dates intact) would serve no legitimate purpose but would prejudice the rights of intervenors. The request should be denied.

Respectfully submitted,

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April 12, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2004, a copy of the foregoing document was served in accordance with Section 12 of the Commission's Rules of Practice.

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